



Regulatory Alert Stay Ahead...

Company Law - Condonation of Delay Scheme 2018 – a measure to rectify default by defaulting companies

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Background

- In September 2017, the Ministry of Corporate Affairs (MCA) issued list of directors who had been disqualified to act as directors under the Companies Act 2013 (2013 Act). This was because the companies in which they were directors, had failed to file financial statements or annual returns with MCA for a continuous period of 3 financial years, from FY 2013-14 to FY 2015-16. These companies were considered as 'defaulting companies'.
- With the disqualification, the Director Identification Numbers (DIN) are temporarily deactivated by MCA for the purpose of filing of e-forms on MCA website. The defaulting companies could not file financial statements or annual returns with MCA.
- In order to give an opportunity to such non-compliant, defaulting companies to become compliant and normalize operations, MCA has decided to introduce "Condonation of Delay Scheme 2018" (CODS-2018 /Scheme) to permit filing of prescribed overdue documents by defaulting companies with MCA, which were due for filing till 30 June 2017.
- This alert summarizes the salient features of CODS-2018.

Highlights of CODS-2018

1. CODS-2018 shall come into force with effect from 1 January 2018 and shall remain in force up to 31 March 2018.
2. The Scheme is applicable to all 'defaulting companies' which includes a company which has not filed its financial statements or annual returns as required under the Companies Act, 1956 (1956 Act) or 2013 Act, as the case may be, and the Rules made thereunder, for a continuous period of 3 years, which were due for filing till 30 June 2017.
3. The Scheme is not applicable to companies which have been struck off/ names removed from Register of Companies by MCA under Section 248(5) of 2013 Act (Struck-off Companies). However, such struck-off companies desiring to activate themselves, may approach National Company Law Tribunal (NCLT) for their revival. DIN of the Directors of such struck-off companies which have made application up to the date of this Scheme, can be re-activated upon NCLT order, subject to filing all overdue documents with MCA.
4. The following overdue documents can be filed with MCA under the Scheme:
 - Annual Report i.e. balance sheet/financial statement and profit and loss account;
 - Annual return;
 - Compliance certificate and
 - Form for intimation of appointment of auditors.
5. The defaulting company after filing the overdue documents shall seek condonation of delay by filing form e-CODS online on the MCA portal with a fee of ₹ 30,000/- (Rupees Thirty Thousand only).

6. Benefits of CODS-2018 are:

- The Scheme provides opportunity to defaulting companies and its directors to rectify the default and file overdue documents with MCA;
 - Pending prosecution, if any, before concerned court for defaults in the filing of annual reports and financial statements as initiated by Registrar of Companies (ROC) shall be withdrawn;
 - The Scheme gives an opportunity to directors who may have been disqualified due to non-filing of overdue documents with MCA to regularise compliance and remove their disqualification from date of regularisation of non-compliance.
7. DINs of the directors associated with the defaulting companies, who do not file their overdue documents under CODS-2018 and form e-CODS and are still found to be disqualified on the conclusion of the Scheme shall be liable to be deactivated.
8. ROC shall take necessary action against defaulting companies which do not avail CODS-2018 and continue to be in default regime.

Conclusion

CODS - 2018 is a welcome step by MCA which allows one-time opportunity to defaulting companies and its directors to regularise past non-compliances and remove disqualification of directors, which will resolve problems in deserving cases.

Source: General Circular no. 16/2017 dated 29 December 2017 issued by Ministry of Corporate Affairs.

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